1957 *Present:* **H. N. G. Fernando, J.**

SUMANASEKARA *et al.*, Appellants, *and* S. I. POLICE, ELLA, Respondent

S. C. 725–728—M. C. Badulla-Haldumulla, 22029

Criminal procedure—Summary case—End of trial—Right of accused or his pleader to address Court—Criminal Procedure Code, ss. 189 (3), 211, 235.

In the trial of a summary case under Chapter 18 of the Criminal Procedure Code the accused person or his pleader is not entitled as of right to address the Court *after* the evidence for the defence has been led.

APPEALS from a judgment of the Magistrate's Court, Badulla-Haldumulla.

M. M. Kumarakulasingham, for the accused-appellants.

I. F. B. Wikramanayake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 14, 1957. H. N. G. FERNANDO, J.—

The accused in this case have been bound over on charges of simple hurt and criminal force under section 325 of the Criminal Procedure Code. No substantial complaint is made about the correctness of the findings of fact against them, but it is necessary for me to consider a criticism of the conduct of the trial which has been made by the Counsel for the appellants.

After the evidence for the prosecution and the defence had been recorded and after the Proctor for the defence had addressed the Court for some time the Magistrate made the following minute:—"I am refusing to hear Mr. Nadarajah further. He has addressed me for about half an hour", and then proceeded to find the charges proved.

It is urged that the Magistrate had no power to "stop" the address of the accused's pleader and that his doing so constituted an improper interference with the rights of the pleader for the defence.

The only authority to which I was referred was the case of *Rowel v. Perera*[1]. In that case the Proctor for the defence was addressing the Court in pursuance of the right conferred by sub-section (3) of section 189 of the Criminal Procedure Code "to open his case" after the recording of the evidence for the prosecution but was "stopped" by the Magistrate. Bertram C. J. observed that the Code "nowhere allows a Magistrate to impose any time limit either in cross-examination or on the remarks of pleaders" and also that "in many cases a pleader cannot effectually open his case without commenting on the evidence for the prosecution". The learned Chief Justice also rejected out of hand the argument that "in opening his case the pleader is not entitled to comment on the evidence for the prosecution."

[1] *(1922) 24 N. L. R. 456.*

With these observations I fully and respectfully agree, for the reason that an express *right* " to open his case " is conferred by section 189 on the accused's pleader, and that that right would be meaningless unless it enabled the pleader to refer to the strength and the weakness of the prosecution and the manner in which it was proposed by evidence for the defence to undermine any such strength or underline any such weakness. But Chapter XVIII of the Code does not make any provision authorising a pleader for the defence to address the Court *after* the evidence for the defence has been led. There is nothing in this Chapter corresponding to the provisions in section 211 and section 235 which expressly enable an accused person or his pleader in trials before the District Court or the Supreme Court to sum up the case for the defence *after* all the evidence has been recorded. It would seem therefore that the right of an accused or his pleader to be heard after the close of the case for the defence in a Magistrate's Court is not statutory, but arises from practice which has apparently hardened into a rule. But there must be in reason a residuum of discretion in the Court to impose a time limit on the length of the address having regard to the circumstances of each particular case. In the present case I am unable to say that it was unreasonable for the Magistrate to " stop " the proctor for the accused after hearing him for half an hour.

The appeals are dismissed.

Appeals dismissed.